IN THE

# Supreme Court of the United States

**October Term, 1978**

No. ..... 78-1554

WESLEY K. BELL,
*Petitioner, Pro Se,*

vs.

STATE OF NEW JERSEY c/o William F. Hyland, Attorney General of the State of New Jersey, State House, Trenton, New Jersey and DOROTHY ANDRES, RUSSELL H. MULLEN, JOHN C. KOHL, SIDNEY GLASER, CLARENCE PELL, VINCENT R. STOLOWSKI, WILLIAM DAVIDOWSKY, DAVID J. GOLDBERG, WILLIAM BURNHAM, MARTIN ANTON, ALAN SAGNER, JOSEPH CUNNINGHAM and NEW JERSEY DEPARTMENT OF TRANSPORTATION,
*Respondents.*

ON PETITION FOR WRIT OF CERTIORARI FROM THE JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

## PETITION FOR WRIT OF CERTIORARI

WESLEY K. BELL
*Petitioner, Pro Se*
188 Route 72
Manahawkin, New Jersey 08050

BATAVIA TIMES, APPELLATE COURT PRINTERS
EDWARD W. SHANNON
EASTERN PENNSYLVANIA REPRESENTATIVE
THE PLAZA, SUITE 23F, PHILADELPHIA, PA. 19103
PHONE: (215) 568-7703

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vs.

STATE OF NEW JERSEY c/o William F. Hyland, Attorney General of the State of New Jersey, State House, Trenton, New Jersey and DOROTHY ANDRES, RUSSELL H. MULLEN, JOHN C. KOHL, SIDNEY GLASER, CLARENCE PELL, VINCENT R. STOLOWSKI, WILLIAM DAVIDOWSKY, DAVID J. GOLDBERG, WILLIAM BURNHAM, MARTIN ANTON, ALAN SAGNER, JOSEPH CUNNINGHAM and NEW JERSEY DEPARTMENT OF TRANSPORTATION,

*Respondents.*

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## PETITION FOR WRIT OF CERTIORARI

### Jurisdictional Grounds

This is a Petition for Writ of Certiorari from the judgment of the United States Court of Appeals for the Third Circuit, rendered January 24th., 1979 affirming the Final Judgment of the United States District Court for New Jersey, filed March 15th., 1978. Both of these opinions are appended hereto. This Court has jurisdiction to review the judgment of the United States Court of Appeals for the Third Circuit by virtue of the

United States Civil Rights Act. Current acts by defendants have been referred to in this appeal under the jurisdictional grounds of Rule 24, number 5, in that these acts have taken place since December 11th., 1978, at which time, arguments were heard in the Third Circuit Federal Court and are intervening matters which were not available at the time of last filing.

## Questions Presented

That the United States Court of Appeals for the Third Circuit incorrectly held the following:

1. that one year statute of limitations barred the Plaintiff from relief sought under the Federal Civil Rights Act.

| | |
|---|---|
| 28 U.S.C. | 1331 and 1343 |
| 42 U.S.C. | 1985(3) |
| 42 U.S.C. | 1983 and 1986 |

2. that the New Jersey six-year statute of limitations for malicious interference with business, contained in N.J.S.A. 2A:14-1 applies to the claim under 42 U.S.C. 1983 and 1985(3).

3. that Plaintiff's original and first amended complaint was time-barred.

4. that Plaintiff did not adequately specify fraudulent concealment to overcome the bar of the statute of limitations.

5. that the purported defamation by defendant Stolowski, in February, 1976 was not covered by 42 U.S.C. 1983.

6. that Appellant be denied his request for the return of specific property.



## Statement of the Case

The State of New Jersey, through its agencies and officials, have conspired and committed, through the defendants, numerous overt acts against Appellant from 1968 to the present, for the purpose of putting Appellant out of business (Kingsley v. Wes Outdoor Advertising Co., 106 N.J. Super. 248, 254) as political retaliation to Appellant's constitutional right of disagreeing with elected and appointed officials of the State and its agencies.

The Appellant, Wesley K. Bell, presently a member of the Stafford Township governing body, has been elected to three terms of office, in 1969, 1972 and 1977. Plaintiff Bell has served as Mayor of his community in 1972, 1973 and 1975. Now a member of the Democratic Party, Plaintiff Bell switched from the Republican Party, prior to his first successful election in 1969.

The Appellant has been a Democratic candidate for the nomination of State Senate in 1971 and 1973; a Democratic candidate for nomination to U.S. Congress in 1974 and a Democratic candidate for the nomination to the U.S. Senate in 1978. In 1975, the Plaintiff was defeated in his re-election bid, after the County Democratic Party supported his opposition.

In 1975 and 1977, the County Democratic Party ran candidates against the Plaintiff, in the June Primary and placed the opposition on the County slate, in an effort to defeat him in the Primary Election. Plaintiff garnered more than double the support, on the bottom of the ticket, than any candidate on the ballot in Stafford Township. Plaintiff has been in the Outdoor Advertising Business since 1957 and derives his living solely from this enterprise, which affects 75% of its gross product income in the areas affected by this suit.

Plaintiff in 1963 and 1964 was publisher of a weekly Southern Ocean County newspaper, which he founded and was active as an outspoken Editor in local and State affairs. Plaintiff continues to carry a large following of respected citizens in South Jersey, through the news and televised media.

The unconstitutional and discriminatory actions of defendants against the Plaintiff include the following:

1. Removal of duly licensed signs.

2. Arbitrarily condemning Plaintiff's roadside property while leaving similarly situated property of his competitors untouched. (Wes Outdoor Advertising Company v. Goldberg, 55 N.J. 347, 262).

3. Arbitrarily redefining the state's riparian interest over Plaintiff's land to force the removal of three billboards.

4. False swearing in 1969, to obtain a judgment in fines of $59,230.00 which was reduced in 1971 to $10,000.00, by the New Jersey Supreme Court and at which time, the court refused to imprison the Plaintiff for 47 years, as requested by the State of New Jersey, for erecting billboards without first obtaining state permits, which were, in fact, being sought through the courts. (Kingsley v. Wes Outdoor Advertising Company, 59 N.J. 182, 280) and (Kingsley v. Wes Outdoor Advertising Company, 106 N.J. Super. 248, 254 and 55 N.J. 336, 262).

5. Oppressively executing judgments upon the Plaintiff so as to paralyze his assets and render him defenseless to pending conspiracy, harassment and other legal proceedings. (Kingsley v. Wes Outdoor Advertising Company, 59 N.J. 182, 280) and (Wes Outdoor Advertising Company v. Goldberg, 55 N.J. 347, 262).



6. State of New Jersey officials filed additional charges seeking $107,000.00 in additional fines for alleged billboard violations, which were dismissed after complete hearings in the County Court.

7. Denying billboard permits for spurious reasons, without notice or an opportunity to be heard, or denying them in effect, by refusing to consider the applications.

8. Cancelling permits for arbitrary reasons and without notice or opportunity to be heard.

9. Removing Plaintiff's signs without resort to appropriate state procedures.

10. Engaging in false swearings before various state tribunals.

11. Engaging in a campaign of public defamation. (See exhibit, "Public Enemy No. 1", page 30).

12. Pursuing a campaign of criminal prosecution against Plaintiff for violation of various laws, while disregarding similar conduct by Plaintiff's competitors.

13. Invoking the Highway Beautification Act in support of takings, where such takings are not eligible for the use of funds, under the acts and diverting such funds for the purpose of harassing the Plaintiff and destroying his business; and withholding from the Plaintiff, critical legal evidence in violation of state statutory and federal constitutional law. (Wes Outdoor Advertising Company v. Goldberg, 55 N.J. 347-262).

14. Obtaining an indictment of Plaintiff for misconduct in office in 1973 and giving a police officer "immunity to prosecution" for perjured testimony, to obtain the indictment, and continued immunity for lying during

the trial, in an attempt to convict the Plaintiff of criminal charges which could have resulted in a maximum six year state prison term.

15. Using the federal Beautification Act against the Plaintiff "only" and not anyone else in the State of New Jersey. (Report, U.S. Dept. of Transportation, 1979, page 33; and Newsweek article, UPDATE, March 5th., 1979, page 31).

16. The New Jersey Attorney General filed answers for all State defendants in this action for the sole purpose of propounding voluminous interrogatories, thus delaying this action for one and one-half years, during which time the Plaintiff answered detailed charges in complaints with dates, names and places with particularity and the detailed description of the overt acts of the alleged conspirators along with copies of documents requested and in some cases, the availability of examination of documents.

The State Attorney General then refused to answer interrogatories that had been served on him and then withdrew the answers filed, claiming the defendants must first apply for State Representation. Then, after reservice of complaints, the State waited to the last hour and then obtained dismissal of complaint, which is now the issue before the court.

17. Arranging to place a $475 million dollar Bond Issue on the November, 1979 General Election Ballot, which will deceptively contain an authorization to spend $490,017.00 to condemn additional lands under contract of purchase by the Plaintiff for his business. $100,000.00 of this Bond Issue would be for this purpose with the remainder to come from federal matching grants. (see



News Article, Atlantic City Press, page 38). Attitudes today by State officials are no different than they were in 1968, when this conspiracy began. The current news article referred to above, reveals, "Acquisition of the roadside land would not only preclude the construction of all traffic-dependent business but would also probably reduce the value of the land behind the scenic rights-of-way". According to Kathy Arnone, a spokeswoman for the state Department of Transportation, the land will be bought to preserve its scenic beauty. "Further development along Route 72, would further harm the environment," Ms. Arnone said.

She said there will be nothing voluntary about the program once it begins. "If they don't sell it to us, we can take it by eminent domain," she said. The State of New Jersey, in this move, values the lands at $20,000 an acre, when in actuality, it is now selling for $1,000.00 per front foot and higher in some instances. This effort will result in utilizing the entire funding to take Plaintiff Appellant's lands only, and then using the excuse that there are not enough funds to complete the project, which is one of the viewpoints the state is presently using as a public relation defense to this pending action by Plaintiff Appellant.

18. State officials are continuing to arbitrarily exempt properties of others from the condemnation plan, as proposed by the State after representing to the New Jersey Superior Court that, in fact, the State was not discriminating in its takings.

19. The State of New Jersey still maintains levies on customers of Plaintiff, even though the State judgments have been paid and requests have been made for release of levies.

20. State officials having knowledge that wrongs conspired to be done and having been committed which were charged in Appellant's complaint and answers to interrogatories. The said Appellees had the power to prevent or aid in preventing the same, neglected or refused so to do, and such wrongful acts were and are still being committed currently, as of this day.

**Argument**

The United States Court of Appeals for the Third Circuit has incorrectly decided important questions of federal law in violation of this Plaintiff's rights under the Civil Rights Act and in violation of this Plaintiff's Constitutional Rights and in so doing, are denying this Plaintiff equal protection and due process under the law. Such a decision by a United States Court of Appeals is one of the grounds contained in Rule 19, of the Supreme Court Rules, governing Jurisdiction on Writ of Certiorari.

The Appellees in this suit rely solely on the immunity statutes and statutes of limitations and therefore the Court must accept the allegations of the complaint as true and it should disregard any alleged Discovery or other matters extraneous to the complaint. Appellant's original complaint satisfies the specific pleading requirements imposed by this Court in Civil Rights Actions and by way of voluminous interrogatories, already answered by Appellant and documents supplied, Appellees should be barred from dismissing this case.[1]

---

[1] Bell v. Hood, 327 U.S. 678 (1946) that "where federally protected rights have been invaded, it has been the rule from the beginning, that courts will be alert to adjust their remedies so as to grant the necessary relief."



Appellees in this case, have resorted to levies, trespass, libel, fraud upon the court, trickery and delaying tactics, in hopes of bankrupting appellant before this matter can ever reach a jury trial. Appellant is and has been unable to use twelve (12) large billboards from 1968 to the present date, and they are now standing blank, awaiting the final outcome of this suit. They have a present yearly income potential of $56,000 per year, total.

Appellant owns an additional eleven billboards, which presently have a yearly total income of $41,000 and are presently being used for advertising purposes. They are now a part of this suit and will come under state action for removal if this case is not approved for Certiorari to the United States Supreme Court.

The State position blatantly deprives Appellant of any avenue of relief and by their strangle-hold on Plaintiff's assets, prevented Appellant from utilizing recourse through the courts.

In comparison, it is like destroying a man's property while he is imprisoned and can do nothing about it.

Appellant has incurred $98,697.19 in attorney's fees from 1968 to the present date, directly or indirectly related to these matters, of which an excess of $56,000 was expended, directly involving this Federal action. Appellant has borrowed and has remortgaged his home, in an attempt to meet legal expenses and is presently indebted for over $37,000.00 for legal expenses, which remain unpaid.

The decision by the Federal District Court and the Third Circuit Court of Appeals leaves the Plaintiff Appellant no redress as the injured citizen.

Appellant's allegation of a Fraudulent Concealment of the Facts concerning the conspiracy should preclude Dismissal of the Complaint on the basis of any Statute of Limitations.

> *Fitzgerald v. Seamans*, 384 F. Supp. 688 (D.D.C. 1974 aff'd in part, remanded in part, 553 F 2d 220 (D.C. Cir. 1977)
>
> "Read into every federal statute of limitations, including the adoption of an analogous local statute of limitations, is the equitable doctrine that in case of defendants fraud or deliberate concealment of material facts relating to his wrongdoing, time does not begin to run until plaintiff discovers, or by reasonable diligence, could have discovered the basis of the lawsuit." 553 F. 2d at 228.

Appellant has *NOT* had the opportunity for discovery, or answers to his interrogatories. The state has continually refused access to records. In a hearing for false swearing, the defendant Martin Anton, acting as the prosecutor, impounded and disposed of Appellant's transcripts of 1969, which documented the false swearing of state defendant Stolowski.

The Third Circuit Court, in this case held,

> "that a plaintiff relying on fraudulent concealment to overcome the bar of the statute of limitations, must specify ". . .how, when and in what manner (the fraudulent concealment) was perpetrated. And especially must there be distinct averments as to the time when the fraud, mistake, concealment or misrepresentation was discovered, and what the discovery is, so that the court may clearly see, whether, by the exercise of ordinary diligence, the discovery might not have been before made".

The Plaintiff clearly met the requirements in combination of the complaint and voluminous interrogatories which gave in great detail, times, places and names of involved persons and the "Defendant Appellees actively misled plaintiff and



his attorneys by filing answers and utilizing their rights as a defendant, obtained complete information and answers to interrogatories. After plaintiff made a motion for summary judgment, for failure of state defendants to answer their interrogatories, the state filed a motion to withdraw their answers and after re-serving defendants, the state again waited until the final hour to file a motion to dismiss, which is now the subject matter before this court. "These actions are so clearly evident that defendants actively misled plaintiff and clearly shows that he had neither actual nor constructive knowledge of all the facts constituting his claim for relief despite his diligence in trying to discover the pertinent facts."

The Third Circuit Court also held in this case, that

> "Plaintiff alleges overt acts, but not his ignorance of them. Paragraph 36 of the amended complaint details acts which include tearing down of signs, condemnation of property, taking of property, impounding of assets, withdrawal and denial of permits, public defamation, criminal prosecution and withholding of legal evidence (59a-62a). It is difficult to conceive how plaintiff possibly could have alleged ignorance of these acts, since he would have felt the deprivation of his claimed rights as soon as such acts were perpetrated."

The Plaintiff's position is that each act, alone by itself, may be difficult to prove as a conspiracy, but to combine all acts, including those of March 16th., 1979 (see News Article Exhibit on Page 38) clearly show a conspiracy exists and is still going on today. "A remedy would be available for the most flagrant and patently unjustified sorts of police conduct." (Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 411).

It would not serve justice to bar plaintiff from including overt acts, committed from 1968 to the present, when an ac-

tive conspiracy still continues today. (Federal Department of Transportation Reports, Page 33, and Newsweek Magazine, Article "UPDATE", March 5th., 1979, on page 31).

The Third Circuit Court opinion, in itself, recognizes that such a conspiracy did exist, but solely relies on the statute of limitations to bar Plaintiff Appellant from relief.

In the eleven years these matters have been under dispute, Appellant has never been able to obtain a jury trial to review any of these acts charged because New Jersey Administrative Law permits only appeals before Hearing Officers and then to Appellate Courts, where no actual testimony is permitted and reasoning and witnesses are discouraged. Questions of damages in this case should be left for a jury to decide.

> Marbury v. Madison, 1 Cranch 137, 163 (1803), that "the very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws," 403 U.S. at 397, and stating that "historically, damages have been regarded as the ordinary remedy for an invasion of personal interests in liberty," id at 395. In (Butz v. Economu No. 76-709) argued November 7th., 1977 and decided June 29th., 1978, the court rejected the claim that the plaintiff's remedy lay only in the state court, under state law, with the Fourth Amendment operating merely to nullify a defense of federal authorization. "The court held that a violation of the Fourth Amendment by Federal agents, gives rise to a cause of action for damages consequent upon the unconstitutional conduct."

The Appellees cite statute of immunities as a defense which does not apply in this case.

> (Butz v. Economu, No. 76-709) argued November 7th., 1977 and decided June 29th., 1978, page 11, held since an unconstitutional act, even if authorized by statute, was viewed as not authorized in contemplation of law, there could be no immunity defense. United States v. Lee, 196 U.S. 218-223 (1882). Virginia Coupon Cases, 114 U.S. 269, 285-292 (1885).



Appellee Stolowski's posting Appellant's picture on the Outdoor Advertising Bureau's 'bulletin board', bearing the typed-in headline, "Public Enemy No. 1", which in fact, remained there for a long period of time, until such time as the Plaintiff discovered and removed it himself, shows malicious, willful and hateful feeling toward Appellant, and served as actual motivation to Appellees, in their overt acts, and therefore they must be held accountable for their conduct.

> (Butz v. Economu No. 76-709) argued November 7th., 1977 and decided June 29th., 1978, page 12) "had exercised it in a malicious or willfully erroneous manner:
> Wilkes v. Dinsman, 7 How. 48 (U.S.) 89, 131 (1849)
> Anderson v. Nosser, 438 F. 2d 183, 205 (1971)
> Weir v. Muller, 527 F 872 (CA5 1977)
> (See Photo—Page 30).

State Appellees, having knowledge that wrongs conspired to be done, and having been committed and are still being committed and such overt acts have been detailed in the Appellant's Complaint and voluminous answers to interrogatories, and said Appellees having the power to prevent or aid in preventing same, neglected or refused so to do and such wrongful acts were and are still being committed.

> Monelv v. New York City Dept. of Social Services, No. 75-1914, argued November 2nd., 1977 and decided June 6th., 1978 U.S. Supreme Court, page 44.
>
> The relevant text of the second conference substitute for the Sherman Amendment is as follows:

"[A]ny person or persons having knowledge that any of the wrongs conspired to be done and *mentioned in the second section of this act*, are about to be committed, and having power to prevent or aid in preventing the same, shall neglect or refuse so to do, and such wrongful act shall be committed, such person or persons shall be liable to the person injured, or his legal representatives." Globe, at 804.

A conspiracy to discriminate can mature and set an effective date to start a point of beginning when the State of New Jersey fails or refuses to condemn adjacent or comparable lands and/or when the State eliminates takings or proceedings against adjacent or comparable lands of which dates, that can only be established at a trial or by discovery, of which Plaintiff Appellant has had an opportunity at neither.

(Butz v. Economu) No. 76-709 U.S. Supreme Court argued November 7th., 1977 and decided June 29th., 1978. And (Barr v. Matteo, supra, at 569; Doe v. McMillan, 412 U.S. 306, 318 (1973)); Section 1 of the Civil Rights Act of 1871—the predecessor of § 1983—mandated that any person who under color of state law, subjected another to the deprivation of his constitutional rights, would be liable to the injured party in an action at law.

The New Jersey Supreme Court held that the New Jersey Commissioner of Transportation had the authority to condemn for Beautification purposes, but that any "abuses of his authority were subject to recourse through the courts." (Wes Outdoor Advertising Co. v. Goldberg, 55 N.J. 347, 262 A 2d 199 EM DOM 6, 17, 58, 68).

Abuses by the Commissioner of Transportation or his department, can only be assertained after full review before a court and jury or at the very least, after complete answers to interrogatories and depositions of defendants and persons involved.



(Butz v. Economu, U.S. Supreme Court No. 76-709, page 27). In situations of abuse, an action for damages against the responsible official can be an important means of vindicating constitutional guarantees. Our system of jurisprudence rests on the assumption that all individuals, whatever their position in government, are subject to federal law:

"No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All officers of the government, from the highest to the least, are creatures of the law, and are bound to obey it."
United States v. Lee, 106 U.S. 196, 220 (1882)
Marbury v. Madison, 1 Cranch 137 (1803)
Scheuer v. Rhodes, 416 U.S. 232, 239-240 (1974)

The Appellant Petitioner respectfully requests that this Court grant the Petition for Writ of Certiorari.

WESLEY K. BELL, *Pro Se*,
188 Route No. 72,
P.O. Box 538,
Manahawkin, New Jersey,
08050.

**Certificate of Service**

I HEREBY CERTIFY that the foregoing petition has been mailed to the opposing counsel duly addressed to their offices and to the Solicitor General, Department of Justice, Washington, D.C., 20530 with the proper postage affixed thereto, this 12 day of April, 1979.

WESLEY K. BELL, *Pro Se*,
188 Route No. 72,
P.O. Box 538,
Manahawkin, New Jersey,
08050.

## APPENDIX

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WESLEY K. BELL,

*Petitioner,*

vs.

STATE OF NEW JERSEY c/o William F. Hyland, Attorney General of the State of New Jersey, State House, Trenton, New Jersey and DOROTHY ANDRES, RUSSELL H. MULLEN, JOHN C. KOHL, SIDNEY GLASER, CLARENCE PELL, VINCENT R. STOLOWSKI, WILLIAM DAVIDOWSKY, DAVID J. GOLDBERG, WILLIAM BURNHAM, MARTIN ANTON, ALAN SAGNER, JOSEPH CUNNINGHAM and NEW JERSEY DEPARTMENT OF TRANSPORTATION,

*Respondents.*

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U.S.D.C. Civil No. 77-1531

U.S. Court of Appeals No. 78-1578

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Argued—December 11th., 1978
Opinion Filed—January 24th., 1979



### Judgment, United States Court of Appeals for the Third Circuit

UNITED STATES COURT OF APPEALS

for the Third Circuit

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No. 78-1578

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WESLEY K. BELL,

*Appellant,*

vs.

STATE OF NEW JERSEY c/o William F. Hyland, Attorney General of the State of N.J., State House, Trenton, New Jersey and DOROTHY ANDRES, RUSSELL H. MULLEN, JOHN C. KOHL, SIDNEY GLASER, CLARENCE PELL, VINCENT R. STOLOWSKI, WILLIAM DAVIDOWSKY, DAVID J. GOLDBERG, WILLIAM BURNHAM, MARTIN ANTON, ALAN SAGNER, JOSEPH CUNNINGHAM and NEW JERSEY DEPARTMENT OF TRANSPORTATION.

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(D.C. Civil No. 77-1531)

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE — DISTRICT OF NEW JERSEY

Present: GIBBONS, VAN DUSEN and ROSENN, *Circuit Judges*

This cause came on to be heard on the record from the United States District Court for the — District of New Jersey and was argued by counsel on December 11, 1978.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court, filed March 15, 1978 be, and the same is hereby affirmed. Costs taxed against appellant.

ATTEST:

THOMAS (ILLEGIBLE)
Clerk

January 24, 1979



UNITED STATES COURT OF APPEALS
For the Third Circuit

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No. 78-1578

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WESLEY K. BELL,

*Appellant,*

v.

STATE OF NEW JERSEY c/o William F. Hyland, Attorney General of the State of N.J., State House, Trenton, New Jersey and DOROTHY ANDRES, RUSSELL H. MULLEN, JOHN C. KOHL, SIDNEY GLASER, CLARENCE PELL, VINCENT R. STOLOWSKI, WILLIAM DAVIDOWSKY, DAVID J. GOLDBERG, WILLIAM BURNHAM, MARTIN ANTON, ALAN SAGNER, JOSEPH CUNNINGHAM and NEW JERSEY DEPARTMENT OF TRANSPORTATION.

---

Appeal from the United States District Court
for the District of New Jersey

(D. C. Civil No. 77-1531)

---

Argued December 11, 1978

Before GIBBONS, VAN DUSEN and ROSENN, *Circuit Judges*

(Opinion Filed Jan 24, 1979)

Michael H. Malin, Esq., David E. Sandel, Jr., Esq., White & Williams, Philadelphia, Pa., *Attorneys for Appellant.*

Francis P. Piscal, Esq., John C. Sahradnik, Esq., Berry, Summerill, Piscal, Kagan & Privetera, Toms River, N. J., *Attorneys for Appellees Burnham and Anton.*

John J. Degnan, Attorney General of New Jersey; Erminie L. Conley, Assistant Attorney General — Of Counsel, Jeffrey M. Hall and Richard J. Harcar, Deputy Attorneys General—On the Brief, Trenton, N. J., *Attorneys for Appellees Andres, Mullen, Kohl, Glaser, Pell, Stolowski, Davidowsky, Goldberg.*

## OPINION OF THE COURT

*PER CURIAM:*

This appeal is from a district court order dismissing with prejudice the complaint of Wesley K. Bell, filed July 26, 1977. That complaint alleged a conspiracy among defendants to put plaintiff out of business, in violation of the Federal Civil Rights Acts (42 U. S. C. §§ 1983 and 1986), by instituting actions against properties owned by or leased to plaintiff in an area zoned commercial in order to deny him advertising permits, to remove his signs illegally and to condemn discriminatorily 38 of 39 properties owned or leased by him without taking similar action against neighboring and adjacent properties devoted to similar commercial use. The ac-



tions of which complaint was made were alleged to have occurred between 1968 and 1970.[1]

---

[1] The alleged unconstitutional and discriminatory actions of defendants against the plaintiff include the following:

(a) removal of duty licensed signs;

(b) arbitrarily condemning plaintiff's roadside property while leaving similarly situated property of his competitors untouched;

(c) arbitrarily redefining the state's riparian interest over plaintiff's land;

(d) oppressively executing judgments upon the plaintiff so as to paralyze his assets and render him defenseless to pending legal proceedings;

(e) denying permits for spurious reasons, without notice or opportunity to be heard, or denying them in effect, by refusing to consider the application;

(f) cancelling permits for arbitrary reasons and without notice or opportunity to be heard;

(g) removing plaintiff's signs without resort to appropriate state procedures;

(h) engaging in false swearings before various state tribunals;

(i) engaging in a campaign of public defamation;

(j) pursuing a campaign of criminal prosecution against plaintiff for violation of various laws, while disregarding similar conduct by various plaintiff's competitors;

(k) invoking the Highway Beautification Act in support of takings, where such takings are not eligible for the use of funds under the acts and diverting such funds for the purpose of harassing the plaintiff and destroying his business; and

(l) withholding from the plaintiff critical legal evidence in violation of state statutory and federal constitutional law.

Jurisdiction was based on 28 U. S. C. §§ 1331 and 1343. The jurisdictional paragraph of the first amended complaint alleged action in violation of 42 U. S. C. § 1985(3), as well as 42 U. S. C. §§ 1983 and 1986. We assume, without deciding, that the amended complaint was effective as to all defendants remaining in the case on March 2, 1978, when it was filed.

After filing in September 1977 an answer and counterclaim, the individual defendants, except for Anton and Burnham, filed in November 1977 a motion to strike their answer and counterclaim, which the court granted on November 21, 1977. Defendants Anton and Burnham separately filed answers and counterclaims in September and October 1977. The state defendants filed on February 15, 1978, a motion to dismiss the complaint.[2] In March 1978 defendants Anton and Burnham also filed a motion to dismiss the complaint. On March 2, 1978, the plaintiff filed a first amended complaint without permission of the court or consent of the defendants.

After argument, the court dismissed the complaint as to all remaining defendants on March 6, 1978,[3] stating that the dismissal was with prejudice and that it need not consider the first amended complaint filed four days before on March 2, 1978.

We affirm the district court judgment because our review of the initial complaint and the first amended complaint shows that the applicable statutes of limitation require such dismissal of the claims under 42 U. S. C. §§ 1983, 1985(3) and 1986.

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[2] As a result of motions filed in October 1977, the complaint was dismissed in December 1977 as to the New Jersey Department of Transportation and the State of New Jersey.

[3] The court read from the bench its oral opinion in support of its oral order dismissing the complaint and directed counsel to submit a written order, which was filed on March 16, 1978. The court stated various reasons for its action (206a-209a).



I. *The applicable statutes of limitations*

Since this action arises under the Civil Rights Acts of the United States, the federal statute of limitations controls where there is such a statutory limitation period provided for in the applicable Civil Rights Act. See *Holmberg v. Armbrecht*, 327 U. S. 392 (1946). 42 U. S. C. § 1986 contains a one-year statute of limitations; thus it is clear that the district court order was correct in dismissing the claim under that section of Chapter 21, Title 42, containing the federal statutes on civil rights.

As to the claims under 42 U. S. C. §§ 1983 and 1985(3), the period of limitation "to be applied is that which would be applicable in the courts of the state in which the federal court is sitting had an action seeking similar relief been brought under state law." *Polite v. Diehl*, 507 F.2d 119, 122-23 (3d Cir. 1974). See also *Jennings v. Shuman*, 567 F.2d 1213, 1216 (3d Cir. 1977).

We agree with the district court that the New Jersey six-year statute of limitations for malicious interference with business contained in N.J.S.A. 2A:14-1 applies to the claim under 42 U. S. C. §§ 1983 and 1985(3).

II. *The failure to allege with particularity events occurring within the statutory period which support the alleged causes of action*

Those events within the compass of the Civil Rights Acts which plaintiff alleged in his initial complaint took place on or before March 2, 1970, when *W. Kingsley v. Wes Outdoor*

*Advertising Co.*, 55 N.J. 336 (1970), was concluded.[4] These events fall outside the limitations period, and thus the initial complaint was time-barred.

The amended complaint did not cure this defect. This court has consistently held that conclusory allegations without supporting facts are not sufficient to make out a complaint under the Civil Rights Acts (particularly 42 U. S. C. §§ 1983, 1985 & 1986). See *Curtis v. Everette*, 489 F.2d 516, 521 (3d Cir. 1973), and cases there cited. Therefore, allegations in the first amended complaint that the state has "delayed and procrastinated" in taking action from "1968 to date" or "1972 to present " (58a) are insufficient without allegations of the act, with dates, of which complaint is made.

III. *The failure to allege fraud in the concealment of the causes of action with particularity*

Plaintiff also invokes the equitable doctrine that fraudulent concealment of material facts tolls the running of the statute of limitations, in support of his contentions that his claims are not time-barred. *See, e.g., Holmberg v. Armbrecht*, 327 U.S. at 397.

In paragraph 39 of the initial complaint plaintiff alleges (19a):

[4] The purported defamation by defendant Stolowski in February 1976 is an allegation not covered by 42 U. S. C. § 1983, since Stolowski was not acting under color of state law at that time. See *United States v. Classic*, 313 U. S. 299, 326 (1940); *Sykes v. State of California (Dept. of Motor Vehicles)*, 497 F.2d 197 (9th Cir. 1974). By 1976, responsibility for regulation and enforcement of outdoor advertising in New Jersey had been transferred to the New Jersey Department of Transportation, whereas it is conceded that Stolowski continued as an employee of the Division of Taxation, Department of the Treasury. See N.J.S.A. 27:1A-52 (7a and 45a).



> "The defendants have engaged in a fraudulent concealment of the facts relative to the conspiracy."

In paragraph 38 of the amended complaint, plaintiff alleges (62a):

> "By reason of the destruction of public records, and the costly dilatory and frivolous litigation of matters under the New Jersey Right-to-Know Act, the individual defendants have conspired to fraudulently conceal from plaintiff all of the foregoing facts."

F. R. Civ. P. 9(b) provides that "[i]n all averments of fraud . . . the circumstances constituting fraud . . . shall be stated with particularity." In *Suckow Borax Mines Consol. v. Borax Consolidated*, 185 F.2d 196, 209 (9th Cir. 1950), the court stated that a "bare allegation of 'fraudulent concealment' is but a conclusion of law which falls far short of the particularity of statement required by Rule 9(b)." Thus the federal courts have made clear that a plaintiff relying on fraudulent concealment to overcome the bar of the statute of limitations must specify

> ". . . how, when and in what manner [the fraudulent concealment] was perpetrated. And especially must there be distinct averments as to the time when the fraud, mistake, concealment, or misrepresentation was discovered, and what the discovery is, so that the court may clearly see, whether, by the exercise of ordinary diligence, the discovery might not have been before made."

*Stearns, Admr. v. Page*, 48 U.S. (7 Howard) 818, 829 (1849). In *Rutledge v. Boston Woven Hose & Rubber Co.*, 576 F.2d 248 (9th Cir. 1978), the court delineated the following standard for pleading fraudulent concealment:

> "[Plaintiff] had the burden of both pleading and ultimately proving fraudulent concealment. To carry that burden, he had to plead facts showing that [defendant] actively misled him, that he had neither actual nor constructive knowledge of the facts constituting his claim for relief despite his diligence in trying to discover the pertinent facts."

*Id.* at 249-50. Similarly, in *Charlotte Telecasters v. Jefferson Pilot Corp.*, 546 F.2d 570 (4th Cir. 1976), the court stated that the facts necessary to show the following elements must be distinctly pleaded:

> ". . . '(1) fraudulent concealment by the party raising the statute together with (2) the other party's failure to discover the facts which are the basis of his cause of action despite (3) the exercise of due diligence on his part.' "

*Id.* at 574. See also *Prather v. Neva Paperbacks, Inc.*, 446 F.2d 338, 340 (5th Cir. 1971); *Moviecolor Ltd. v. Eastman Kodak Co.*, 288 F.2d 80, 88 (2d Cir. 1961); *Fitzgerald v. Seamans*, 384 F.Supp. 688, 693 (D. D.C. 1974), *aff'd & remanded on other grounds*, 553 F.2d 520 (D.C. Cir. 1977).

Measured against the standards set forth in the above decisions, plaintiff's initial and first amended complaints are both deficient, for the pleadings reveal no allegations relating to plaintiff's "failure to discover the facts which are the basis of his cause of action." It is the overt acts of the alleged conspirators, not the conspiracy itself, which are the basis of a cause of action under the Civil Rights Acts: "the conspiracy itself is not a cause of action without overt acts . . ." *Hoffman v. Halden*, 268 F.2d 280, 295 (9th Cir. 1959). Plaintiff al-



leges overt acts, but not his ignorance of them.[5] The most liberal reading of paragraph 38 of the amended complaint, *supra*, yields at best an implication that plaintiff failed to discover a conspiracy, as opposed to overt acts.[6] A less strained reading indicates that plaintiff asserts only a concealment of potential evidence, the remedy for which would have been available in the federal discovery procedures, after *timely* filing of a civil rights action.

Since we rule that the first amended complaint was also time-barred, we need not consider whether the district court has required to permit that amendment pursuant to F. R. Civ. P. 15(a) at so late a date in the proceedings. See note 2 above.

The judgment of the district court will be affirmed.

TO THE CLERK: Please file the foregoing opinion.

. . . . . ,
*Circuit Judge.*

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[5] Paragraph 36 of the amended complaint details acts which include tearing down of signs, condemnation of property, taking of property, impounding of assets, withdrawal and denial of permits, public defamation, criminal prosecution, and withholding of legal evidence (59a-62a). It is difficult to conceive how plaintiff plausibly could have alleged ignorance of these acts, since he would have felt the deprivation of his claimed rights as soon as such acts were perpetrated.

[6] We leave for another day a complaint, charging action by one state official, which contains allegations with particularity that such a defendant fraudulently concealed that he had conspired with other co-defendants.

**Memorandum Decision, United States District Court, District for New Jersey**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

---

WESLEY K. BELL,

*Plaintiff,*

v.

STATE OF NEW JERSEY, *et al.*,

*Defendants.*

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Civil Action No. 77-1531
Assigned to George H. Barlow, *U.S.D.J.*

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ORDER OF DISMISSAL

This matter having been heard by the court upon the motions and applications of John J. Degnan, Attorney General of New Jersey, (Richard J. Harcar and Jeffrey M. Hall, Deputy Attorneys General, appearing), and Francis P. Piscal, Esquire, (John C. Sahradnik, Esquire, appearing), to dismiss the plaintiff's Complaint against defendants Dorothy Andres, Russell H. Mullen, John C. Kohl, Sidney Glaser, Clarence Pell, Vincent R. Stolowski, William Davidowski, David J. Goldberg, Alan Sagner, Joseph Cunningham, Martin Anton, and William Burnham, and Michael H. Malin, Esquire, of White and Williams appearing in opposition, and



this court having considered said applications, motions, and arguments of counsel, and for good cause appearing,

IT IS, on this .... day of March, 1978 ORDERED that the plaintiff's Complaint against the above-named defendants be dismissed with prejudice for the reasons stated in the court's oral opinion of March 6, 1978.

.....

GEORGE H. BARLOW, *U.S.D.J.*

*Public Enemy No. 1 Picture.*


United Press International Telephoto

**STICKY PICKET** — New Jersey businessman Wesley K. Bell of Manahawkin holds his placard while picketing the White House in protest of a State Highway Department decision to take over some of his advertising billboards because they 'violate the landscape and scenic enhancement provisions of the highway beautification act.' Bell said he had appealed to both Rep. William T. Cahill (R-N.J.) and President Nixon. Having no luck with either, Bell decided to picket the White House



**Newsweek UPDATE Article for March 5, 1979**

## "LADY BIRD'S BILL"

Newsweek Magazine, March 5th., 1979
"UPDATE" - Page 18

When the late President Lyndon Johnson signed the HIGHWAY BEAUTIFICATION ACT in 1965, he said that it would "bring the wonders of nature back into our daily lives." Today, the program is widely considered a failure, and may soon be abolished.

The act, which LBJ once referred to as "Lady Bird's Bill" because it was one of her pet projects, was designed in part to eliminate unsightly billboards along 43,000 miles of federally funded interstate highways. It prohibited "outdoor advertising signs" within 660 feet of the road and restricted them to land zoned for commercial use; existing signs that didn't comply with the new law were to be pulled down. So far, 88,000 offending road signs have been removed—but 208,000 others remain. One reason why so many signs are still standing is that the Highway Beautification Act left enforcement of their removal to the states. While some complied with the new law, others virtually ignored it. A Transportation Department report shows that Missouri and New Jersey have zero percent compliance, and that Georgia has actually put up 573 new, nonconforming signs since the act took effect. According to the report, the Northwest has the best compliance record (85 per cent) and the Southeast the worst (14 per cent).

JUNKYARDS: The program has also suffered from erratic funding; annual appropriations have ranged from $75.5 million in 1967 to $10 million in 1971. The current

budget provides for only $13 million, and that must go toward landscaping highways, screening roadside junkyards—and sign removal. At that rate, says Richard Moeller, the Federal Highway Administration's overseer of the act, "it will take 110 years" to tear down all the billboards. The program was dealt a major blow late last year when Congress passed an amendment requiring states to compensate advertisers for every sign taken down (at a cost of $2,000 to $15,000 per sign), even if the signs are removed under local ordinances and have been up long enough to repay the owners' initial investment. A spokeswoman for the Garden Club of America charges that this has created "a bonanza for the billboard industry". Many garden-clubbers and environmentalists who backed the 1965 legislation have withdrawn their support, while billboard-trade organizations are now in favor of the program.

'TROUGHS': "It's time we admit the Highway Beautification Act is a failure and seek its repeal," says Vermont Senator Robert F. Stafford, who introduced a bill last month that would let states and cities enforce their own beautification policies. And President Carter has eliminated all funds for sign removal from his proposed 1980 budget, pending the outcome of a Transportation Department study of whether the program is worth maintaining. One person who thinks so is Lady Bird Johnson. "In my experience, I have found there are troughs and crests in the establishment of many programs," says the former First Lady. "If the majority of citizens want the beauty of landscaped highways where scenery is not obscured by billboards or blight, I firmly believe we can continue toward that goal."



**Reports by Federal Department of Transportation**

As of 12-31-78

*PERCENT NONCONFORMING SIGNS REMOVED - RANKING BY STATES*

| *Ranking* | *State* | *Percent Nonconforming Signs Removed* |
|---|---|---|
| 1 | Alaska | 100* |
| 2 | Hawaii | 100 |
| 3 | Puerto Rico | 100* |
| 4 | Vermont | 100 |
| 5 | Oregon | 97 |
| 6 | Washington | 86 |
| 7 | Minnesota | 85 |
| 8 | Nevada | 85 |
| 9 | Kentucky | 80 |
| 10 | Illinois | 72 |
| 11 | Montana | 72 |
| 12 | Utah | 64 |
| 13 | Idaho | 63 |
| 14 | Michigan | 54 |
| 15 | North Dakota | 54 |
| 16 | California | 50 |
| 17 | West Virginia | 49 |
| 18 | Alabama | 47 |
| 19 | Delaware | 47 |
| 20 | New Hampshire | 46 |
| 21 | Colorado | 45 |
| 22 | Nebraska | 44 |
| 23 | Iowa | 43 |
| 24 | Pennsylvania | 41 |
| 25 | South Carolina | 41 |
| 26 | Texas | 40 |

| *Ranking* | *State* | *Percent Nonconforming Signs Removed* |
|---|---|---|
| 27 | Maine | 38 |
| 28 | Connecticut | 33 |
| 29 | Oklahoma | 32 |
| 30 | New York | 21 |
| 31 | Ohio | 21 |
| 32 | South Dakota | 21 |
| 33 | Arizona | 20 |
| 34 | New Mexico | 19 |
| 35 | Wyoming | 19 |
| 36 | Kansas | 18 |
| 37 | Maryland | 18 |
| 38 | Massachusetts | 16 |
| 39 | North Carolina | 16 |
| 40 | Arkansas | 15 |
| 41 | Mississippi | 13 |
| 42 | Indiana | 10 |
| 43 | Florida | 9 |
| 44 | Virginia | 9 |
| 45 | Wisconsin | 9 |
| 46 | Rhode Island | 8 |
| 47 | Louisiana | 7 |
| 48 | Georgia | 2 |
| 49 | Tennessee | 2 |
| 50 | District of Columbia | 0 |
| 51 | Missouri | 0 |
| 52 | New Jersey | 0 |

* No Signs Acquired or Removed

DATA SOURCE - QUARTERLY REPORTS As of 12-13-78



U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

Nationwide Summary Report
Sign Acquisition and Removal under the Highway Beautification Act
As of December 31, 1978

| | STATE | Nonconforming Compensable Signs: Acquisitions: This Period | Acquisitions: To Date | Remaining | Total | % Acq'd | Removals: This Period | Removals: To Date | % Rem |
|---|---|---|---|---|---|---|---|---|---|
| 1 | CONNECTICUT | 4 | 89 | 183* | 272 | 33 | 4 | 89 | 33 |
| | MAINE | 5 | 1,020 | 1,652 | 2,672 | 38 | 5 | 1,018 | 38 |
| | MASSACHUSETTS | 3 | 35 | 145 | 180 | 19 | 3 | 29 | 16 |
| | NEW HAMPSHIRE | 16 | 596 | 621* | 1,217 | 49 | 17 | 561 | 46 |
| | NEW JERSEY | 0 | 0 | 496 | 496 | 0 | 0 | 0 | 0 |
| | NEW YORK | 317 | 1,230 | 4,568 | 5,798 | 21 | 317 | 1,223 | 21 |
| | RHODE ISLAND | 0 | 8 | 97 | 105 | 8 | 0 | 8 | 8 |
| | VERMONT | 0 | 917 | 0 | 917 | 100 | 0 | 917 | 100 |
| | PUERTO RICO | 0 | 0 | 0 | 0 | 100** | 0 | 0 | 100** |
| | TOTAL | 345 | 3,895 | 7,762 | 11,657 | 33 | 346 | 3,845 | 33 |
| 3 | DELAWARE | 0 | 181 | 122 | 303 | 60 | 5 | 143 | 47 |
| | MARYLAND | 1 | 478 | 1,519 | 1,997 | 24 | 2 | 359 | 18 |
| | PENNSYLVANIA | 240 | 7,605 | 10,860 | 18,465 | 41 | 240 | 7,605 | 41 |
| | VIRGINIA | 55 | 426 | 3,506 | 3,932 | 11 | 0 | 343 | 9 |
| | WEST VIRGINIA | 6 | 690 | 731 | 1,421 | 49 | 6 | 690 | 49 |
| | DIST. OF COLUMBIA | 0 | 5 | 0 | 5 | 100 | 0 | 0 | 0 |
| | TOTAL | 302 | 9,385 | 16,738 | 26,123 | 36 | 253 | 3,140 | 35 |

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| 4 | ALABAMA | 1 | 1,912 | 2,161 | 4,073 | 47 | 5 | 1,905 | 47 |
| | FLORIDA | 108 | 1,922 | 12,885 | 14,807 | 13 | 31 | 1,387 | 9 |
| | GEORGIA | 12 | 585 | 23,589 | 24,174 | 2 | 12 | 580 | 2 |
| | KENTUCKY | 18 | 2,789 | 622* | 3,411 | 82 | 8 | 2,726 | 80 |
| | MISSISSIPPI | 40 | 420 | 1,996 | 2,416 | 17 | 1 | 324 | 13 |
| | NORTH CAROLINA | 55 | 969 | 4,429 | 5,398 | 18 | 44 | 852 | 16 |
| | SOUTH CAROLINA | 20 | 1,493 | 2,172 | 3,665 | 41 | 20 | 1,493 | 41 |
| | TENNESSEE | 61 | 226 | 8,313 | 8,539 | 3 | 37 | 184 | 2 |
| | TOTAL | 315 | 10,316 | 56,167 | 66,483 | 16 | 158 | 9,451 | 14 |
| 5 | ILLINOIS | 78 | 9,272 | 2,242 | 11,514 | 81 | 176 | 8,336 | 72 |
| | INDIANA | 336 | 1,566 | 9,764 | 11,330 | 14 | 25 | 1,136 | 10 |
| | MICHIGAN | 340 | 5,448 | 3,925 | 9,373 | 58 | 229 | 5,045 | 54 |
| | MINNESOTA | 52 | 6,455 | 300 | 6,755 | 96 | 922 | 5,739 | 85 |
| | OHIO | 216 | 2,382 | 6,180 | 8,562 | 28 | 152 | 1,827* | 21 |
| | WISCONSIN | 12 | 2,334 | 19,778 | 22,112 | 11 | 14 | 1,977 | 9 |
| | TOTAL | 1,034 | 27,457 | 42,189 | 69,646 | 39 | 1,518 | 24,060 | 35 |
| 6 | ARKANSAS | 108 | 722 | 3,225 | 3,947 | 18 | 89 | 581 | 15 |
| | LOUISIANA | 5 | 176 | 1,937 | 2,113 | 8 | 17 | 154 | 7 |
| | NEW MEXICO | 0 | 290 | 1,198 | 1,488 | 19 | 0 | 290 | 19 |
| | OKLAHOMA | 5 | 1,750 | 3,684 | 5,434 | 32 | 3 | 1,740 | 32 |
| | TEXAS | 186 | 7,585 | 11,338 | 18,923 | 40 | 186 | 7,585 | 40 |
| | TOTAL | 304 | 10,523 | 21,382 | 31,905 | 33 | 295 | 10,350 | 32 |
| 7 | IOWA | 242 | 7,267 | 1,632 | 8,899 | 82 | 408 | 3,859 | 43 |
| | KANSAS | 0 | 2,696 | 12,114 | 14,810 | 18 | 75 | 2,657 | 18 |
| | MISSOURI | 0 | 0 | 6,397 | 6,397 | 0 | 0 | 0 | 0 |
| | NEBRASKA | 33 | 5,147 | 6,600* | 11,747 | 44 | 61 | 5,134 | 44 |
| | TOTAL | 275 | 15,110 | 26,743 | 41,853 | 36 | 544 | 11,650 | 28 |



| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| 8 | COLORADO | 31 | 1,645 | 1,850 | 3,495 | 47 | 20 | 1,589 | 45 |
| | MONTANA | 43 | 7,153 | 2,748 | 9,901 | 72 | 3 | 7,113 | 72 |
| | NORTH DAKOTA | 13 | 1,593 | 1,338 | 2,931 | 54 | 11 | 1,570 | 54 |
| | SOUTH DAKOTA | * | 1,586* | 5,685* | 7,271 | 22 | * | 1,563* | 21 |
| | UTAH | 103 | 2,167 | 307 | 2,474 | 88 | 15 | 1,578 | 64 |
| | WYOMING | 16 | 472 | 2,000 | 2,472 | 19 | 16 | 472 | 19 |
| | TOTAL | 206 | 14,616 | 13,928 | 28,544 | 51 | 65 | 13,885 | 49 |
| 9 | ARIZONA | 5 | 1,350 | 5,195 | 6,545 | 21 | 18 | 1,335 | 20 |
| | CALIFORNIA | 30 | 1,953 | 1,900 | 3,853 | 51 | 37 | 1,927 | 50 |
| | HAWAII | 0 | 6 | 0 | 6 | 100 | 0 | 6 | 100 |
| | NEVADA | 0 | 694 | 123 | 817 | 85 | 1 | 694 | 85 |
| | TOTAL | 35 | 4,003 | 7,218 | 11,221 | 36 | 56 | 3,962 | 35 |
| 10 | ALASKA | 0 | 0 | 0 | 0 | 100** | 0 | 0 | 100** |
| | IDAHO | 16 | 1,207 | 693 | 1,900 | 64 | 4 | 1,203 | 63 |
| | OREGON | 35 | 1,999 | 8 | 2,007 | 100 | 19 | 1,950 | 97 |
| | WASHINGTON | 13 | 2,590 | 166 | 2,756 | 94 | 32 | 2,379 | 86 |
| | TOTAL | 64 | 5,796 | 867 | 6,663 | 87 | 55 | 5,532 | 83 |
| GRAND TOTAL | | 2,880 | 101,101 | 192,994 | 294,095 | 34 | 3,290 | 91,875 | 31 |

FORM PR-1378
(REV. 12-71)

* Incomplete Data Received

** No Signs Acquired or Removed

**News Article, Atlantic City Press, March 16th., 1979**

## STATE PLAN COULD PREVENT DEVELOPMENT ON ROUTE 72

The Atlantic City Press—Friday, March 16, 1979
by: Sarah Griffith—Press Correspondent

MANAHAWKIN—The state Department of Transportation wants to buy "scenic rights of way" along Route 72 between Route 9 and the bay, a plan that would preclude development along that valuable stretch of highway. The proposal, part of $475 million state bond issue that is expected to go before the voters in November, would allow the state to purchase a 60-to-100 foot wide strip of land on each side of the three-mile section of Route 72, the only road from metropolitan Philadelphia and New York to Long Beach Island.

In recent years, businesses located along Bay Avenue here have been relocating on Route 72, and the highway has slowly begun supplanting the town's once-thriving main street as a commercial area.

Under the terms of the bond issue, which must be approved by the Legislature before it reaches the ballot; $490,017 would be set aside for land acquisition. Of this, $100,000 would come from the state bond issue with most of the remainder from federal matching grants. Acquisition would begin in 1982.

Acquisition of the roadside land would not only preclude the construction of all traffic-dependent businesses but would also probably reduce the value of the land behind the 'scenic rights of way'.



*Appendix—News Article, Atlantic City Press, March 16th., 1979.*

According to Kathy Arnone, a spokeswoman for the state Department of Transportation, the land will be brought to preserve its scenic beauty. "Further development along Route 72 would further harm the environment," Ms. Arnone said.

She said there will be nothing voluntary about the program once it begins. "If they don't sell it to us, we can take it by eminent domain", she said. An identical program, which has provoked a number of lawsuits, has been under way between the Parkway and Route 9 since the mid 1960's. Ms. Arnone said the $490,017 projected to purchase the land is based on recent appraisals.

Exactly how much vacant land is available along the both sides of the three-mile stretch is unknown. Commercial front footage along Route 72 is extremely valuable. Land there generally sells for more than $20,000 an acre. As the state would be effectively "taking" the most valuable part of the land—the front footage along the highway—the parcels it acquires could be expected to sell for very near the price of the entire, unsubdivided parcel.